CALIFORNIA TRANSPORTATION COMMISSION

OVERVIEW OF TRANSPORTATION PROGRAMMING IN CALIFORNIA

Transportation programming is the commitment of transportation funds to be available over a period of several years for allocation to particular projects. Separate programming documents, prepared and adopted for somewhat different purposes, are required under state and federal law.

State Transportation Improvement Program

Under California law, the State Transportation Improvement Program (STIP) and the State Highway Operations and Protection Program (SHOPP) are the two primary documents through which the California Transportation Commission (Commission) commits and allocates ongoing state program funds to particular projects.

The Commission also commits and allocates state funding for projects under several one-time programs established under Proposition 1B (2006). These include the Corridor Mobility Improvement Account (CMIA) for $4.5 billion; the Route 99 Bond program for $1 billion; the Trade Corridors Improvement Fund (TCIF) for $2.0 billion; the State-Local Partnership Program Account for $1.0 billion; and the Highway-Railroad Crossing Safety Account (HRCSA) for $250 million. The Commission also allocates project funding for the Traffic Congestion Relief Program (TCRP) enacted in AB 2928 (2000), which designated $4.9 billion in funding for 141 specific projects. All of these special programs are outside the STIP and not subject to the STIP process or limitations.

The STIP is a biennial five-year program of projects adopted by the Commission and is funded potentially from four sources, the State Highway Account, the Transportation Investment Fund (Proposition 42), the Transportation Facilities Account (Proposition 1B) and the Public Transportation Account.

The State Highway Account (SHA) includes revenues from State gasoline taxes and weight fees and federal transportation revenues apportioned to the state. The STIP receives any portion of SHA revenue that remains after funding State transportation operations and the SHOPP. Since 2005, SHA revenues have been inadequate to provide any funding for the STIP other than federal Transportation Enhancement (TE) funds.

The Transportation Investment Fund (TIF) was created by AB 2928 (2000) to receive transfers of the revenues derived from the portion of the state sales tax on gasoline that remains after deducting the “spillover,” as discussed further below. TIF revenues are divided, with 20% to the Public Transportation Account (25% of which falls to the STIP), 40% directly to the STIP, and 40% for a subvention program to cities and counties for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair.

Proposition 42, a constitutional amendment approved in March 2002, made the TIF and the 20-40-40 split permanent. It also permitted the suspension of an annual TIF transfer upon a declaration of fiscal emergency by the Governor, supported by a 2/3 vote of each house of the Legislature. Proposition 1A (2006) limited TIF suspensions to twice in 10 years and required that suspensions be repaid within three years.

The Public Transportation Account (PTA) is a designated trust fund for planning and mass transportation purposes, with revenues derived principally from the state sales tax, including (1) the "spillover," (2) the Proposition 111 increment, (3) the sales tax on diesel fuel, and (4) the 20% TIF transfer. The spillover is a provision in law that dates back to 1971, when the Transportation Development Act created the ¼ percent sales tax for local transportation funds, reduced the state sales tax by ¼ percent and extended the state sales tax to gasoline. It provided that the excess amount received by the state that would not have been collected otherwise was a spillover that would go to what was then the Transportation Planning and Research Account, later the Public Transportation Account. Through the years, the spillover provision has been amended to divert all or portions of the spillover to other purposes before the funds were deposited in the PTA. Beginning with 2008-09, statute generally provides that 50% of the spillover will go to the Mass Transportation Fund (MTF) and the balance to the PTA, although 2008-09 budget made an exception and designated a specific dollar amount for MTF. The MTF is used to pay for debt service on transportation bonds and other programs historically paid from the General Fund.

The Proposition 111 increment is the revenue from the sales tax on gasoline that is attributable to the increase in the gasoline excise tax made by Proposition 111 (1989).

A portion of PTA revenues is made available to the State Transit Assistance program, a formula subvention program for transit operators. That portion is 75% for revenues from the TIF transfer, 66% for revenues from the spillover, and 50% for other PTA revenues. The balance of PTA revenues is made available for state transportation programs, including planning, intercity rail operations, and the STIP.

The Transportation Facilities Account (TFA) was created by Proposition 1B to receive $2 billion in bond proceeds to augment other sources of STIP funding. These bond proceeds are available for any STIP purpose.

The Commission may include projects in the STIP only if they are first nominated either by one of 48 regional agencies in its regional transportation improvement program (RTIP) or by the Department of Transportation (Caltrans) in its Interregional Transportation Improvement Program (ITIP). Since the enactment of SB 45 in 1997, the STIP has consisted of two broad programs, the regional program funded with 75% of new STIP funding and the interregional program funded from 25%. The 75% regional program is further subdivided by formula into county shares. County shares are available solely for projects nominated by regional agencies in their RTIPs. The Caltrans ITIP may nominate projects only for the interregional program. Under restricted circumstances, an RTIP may also recommend a project for funding from the interregional share. Where Caltrans and a regional agency agree, a project may be funded partially from a county share and partially from the interregional share.

STIP county shares are available for a broad array of transportation improvement projects, including improving state highways, local roads (including rehabilitation), public transit, intercity rail, pedestrian and bicycle facilities, grade separations, transportation system management, transportation demand management, soundwalls, intermodal facilities, safety, and providing funds to match federal transportation funds. Up to 5% of a county's share may be programmed for the regional agency's project planning, programming and monitoring. STIP funds are available only for capital improvements, not for operating or maintenance costs.

The 25% interregional share is limited to state highway, intercity passenger rail, mass transit guideway, or grade separation projects that facilitate the interregional movement of people and goods. At least 60% of the interregional share (15% of the STIP) must be programmed for projects on the interregional road system, as defined in statute, and for intercity rail. At least 15% of that 60% (9% of the interregional program; 2.25% of the STIP) must be for intercity rail. Of the other 40% of the interregional share (10% of the STIP), 60% (at least 24% of the interregional program) must be programmed in the South 13 counties and 40% (at least 16% of the interregional program) in the North counties.

The STIP distribution formulas apply without regard to funding source and, as much as possible, the Commission programs projects in the STIP without regard for the funding sources. TIF (Proposition 42) and TFA (Proposition 1B) revenues are each available for any STIP purpose, while PTA funds are available only for rail and transit projects. When estimated PTA revenues are lower than the level of nominations for rail and transit, the Commission may select STIP projects without regard to mode. However, when estimated PTA revenues are higher than the level of rail and transit nominations, the Commission programs all PTA revenues to rail and transit projects and all TIF and TFA revenues to highway and other projects.

A portion of the federal transportation funds apportioned to the state are available for use only on Transportation Enhancement (TE) projects, as defined in the federal law. TE purposes include bicycle and pedestrian facilities and various types of projects designed to preserve or enhance transportation facilities (excluding mitigation measures ordinarily required as part of transportation improvement projects). Examples have included extraordinary landscaping, land acquisition to preserve views, and historic rail station restoration. These funds are programmed together with other federal and state funds in the STIP, though the restricted eligibility for the funds requires that they be tracked separately to insure that the state is making full use of the federal TE apportionment. The tracking includes the identification of a separate TE target for each county share and the interregional share in each fund estimate. These targets are guides that do not limit the amount that may be programmed for TE-eligible projects from within each share.

STIP projects are programmed by fiscal year in each of four project components: (1) environmental and permits, (2) plans, specifications, and estimates, (3) right-of-way, and (4) construction. Because, by law, the Commission does not allocate the funds used for Caltrans support costs, the STIP further breaks down costs for the right-of-way and construction components for Caltrans projects into separate subcomponents for support and capital outlay. Expenditures for STIP projects are drawn from budget appropriations in each of the 3 major state budget categories: capital outlay, support, and local assistance. All local agency projects are from local assistance, regardless of STIP component. Caltrans projects are from capital outlay (right-of-way and construction) and support (all 4 components).

The SHOPP is a biennial four-year programming document prepared by Caltrans that includes projects designed to maintain the safety and integrity of the state highway system. It does not include projects to add through lanes to increase capacity. Most of the projects are for pavement rehabilitation, bridge rehabilitation, and traffic safety improvements. Other projects include operational improvements (e.g., traffic signalization), roadside rehabilitation, and roadside rest areas. The SHOPP is approved by the Commission and is funded from the State Highway Account. Proposition 1B also provided the SHOPP one-time supplemental funding of $500 million through the Highway Safety, Rehabilitation, and Preservation Account.

Allocation of Appropriations

Caltrans may expend state or federal transportation funds on a programmed project or reimburse a local agency for its expenditures on a programmed project only when the funds have been appropriated by the Legislature. For local agency projects and for Caltrans capital outlay for right-of-way or construction, the use of appropriations is subject to allocation by the Commission. Appropriations for Caltrans support costs are not subject to Commission allocation. Local agencies may be reimbursed for expenditures they incurred for a project prior to the time of allocation only if (1) the regional or local agency submitted a project allocation request prior to the expenditures giving notice of the agency's intent to expend its own funds prior to allocation approval, (2) the expenditures were in accordance with the STIP both at the time of expenditure and at the time of allocation, and (3) the Commission finds there was no legal impediment to a Commission allocation at the time of expenditure other than the lack of State budget authority.

County and Interregional Shares

The Commission's programming of projects in the STIP is constrained by the formulas for county and interregional shares, which apply to discrete 4-year county share periods ending 2007-08, 2011-12, 2015-16, etc. The 2010 STIP, covering the five years ending 2014-15, will cover the final 2 years of one period and the first 3 years of the following period. The 2012 STIP will add the final year of that period and the first year of the following period.

For each period, the interregional share is 25% of the STIP. The 75% for county shares is first divided, with 60% (45% of the STIP) to the 13 counties in the South Group and 40% (30% of the STIP) to the North Group. Within each of the two county groups, the division of shares between counties is based 75% on population and 25% on state highway miles. The population is based on the latest census at the beginning of the county share period.

Under statute, each region is guaranteed its county share for each 4-year period, though there is no guaranteed amount for any particular year or STIP. For each STIP, the Commission must program—at a minimum—projects nominated by the region from its current county share unless the Commission finds that the RTIP is inconsistent with the STIP guidelines or is otherwise not a cost effective use of state funds. For this purpose, the current county share is the share for the 4-year share period that ends during the period of the current STIP. A region may also choose not to program all or a portion of its share, reserving it for a later STIP. In any case, whenever a county share is not programmed, for any reason, the unprogrammed balance is carried over and added to the county share available for the next period.

Generally, the Commission may not program projects in a county in an amount that exceeds the county's share for the 4-year period that extends beyond the current STIP. The primary exception is that, for counties in regions of less than 1 million population, the region may request and receive an advance of county share for future 4-year share periods. Such an advance for any county is limited to one project (which may be the largest STIP project in the county), up to 200% of the county share for the current 4-year period. On a statewide basis, these advances are limited by the overall programming capacity for the current STIP, as identified in the fund estimate.

The interregional share may also receive an advance. Advances for the interregional share are limited only by the programming capacity for the current STIP and by the extent to which county shares are left unprogrammed.

As a general rule, the amount counted against a county or interregional share is the amount programmed or allocated. The statutes say that, for county and interregional share purposes, project costs shall not be changed to reflect construction contract awards, actual right-of-way purchase costs, or differences that are within 20% of the amount programmed for actual project development costs. One exception is that if the final right-of-way estimate is less than 80% or greater than 120% of the amount programmed, the amount is adjusted for the final expenditure estimate (usually provided to the Commission at the time of the construction allocation). Another exception is that the Commission may adjust its project construction allocation if Caltrans reports a contract award that is less than 80% of the engineer's estimate. Basing county and interregional shares on programming and allocations makes share accounting much simpler and timelier than it would be if it applied to actual expenditures. It can also provide an incentive for accuracy in cost estimating.

The language of the statutes with regard to share accounting uses terminology that applies specifically to Caltrans projects. In practice, the general rule must be applied differently to local agency projects than to Caltrans projects because local agencies may receive STIP funds only if they are allocated, while all Caltrans costs must be paid by the State in any case, regardless of programming. The Commission does not allocate the funds for Caltrans support work under any component (environmental, design, right-of-way, or construction). For Caltrans right-of-way capital outlay, the Commission allocates funds only on an annual basis, not on a project basis. For Caltrans construction capital outlay, the Commission has historically allocated funds, but with a delegated level of flexibility to cover small increases at award (Resolution G-12). Only for larger increases does the Commission make individual supplemental allocations.

For Caltrans projects, the statutory rules apply. Construction cost increases covered within the G-12 delegation are not counted, though supplemental allocations are. Cost decreases at award do not affect the count unless Caltrans has reported a contract award less than 80% of the engineer's estimate and the Commission has adjusted the project allocation accordingly. For right-of-way, the amount counted is the amount programmed, unless the final right-of-way estimate is less than 80% or more than 120% of the amount programmed. For project development, the amount counted is the amount programmed, unless the final cost differs by more than 20%, upward or downward.

For local projects, the amount counted for all components is simply the amount programmed or allocated. No reduction from an allocated amount is counted. To maintain a level of flexibility comparable to Caltrans projects, the Commission's guidelines do permit local agencies to expend funds allocated for the two project development components interchangeably and to expend up to 20% of the amounts allocated each for project development, right-of-way, or construction on another component, up to a limit of 20% of the amount programmed for the other component. Said another way, the transfer between components cannot exceed 20% of the smaller of the amounts programmed for the two components.

Timely Use of Funds

By statute, as a general rule, STIP funds may be allocated by the Commission for each project component only until the end of the fiscal year for which that component is programmed in the STIP, and the funds are available for expenditure during that fiscal year and the following two fiscal years. In addition, by Commission policy, funds allocated for construction or acquisition of equipment are subject to award of a contract within 6 months of the date of allocation. If any of these deadlines is not met, the funds are no longer available for the project. The Commission may extend a deadline if it finds "that an unforeseen and extraordinary circumstance beyond the control of the responsible agency has occurred that justifies the extension." The extension is not to exceed the period of delay directly attributed to the extraordinary circumstance and in no event may exceed 20 months.

In practice, the timely use of funds rule applies to all components for local projects and only to construction for Caltrans projects. That is because Caltrans support costs are not subject to allocation by the Commission and because Caltrans right-of-way is not allocated on a project-by-project basis.

Where a project fails to meet the deadline for allocation, the project is dropped from the STIP. Any county share applied to the project is lost for that county share period. However, that share is carried over and becomes available to the county again in the following 4-year county share period. Where a project fails to meet an award or expenditure deadline, the allocation ceases and any remaining funds from the allocation are no longer available. As with any other project, no adjustment is made to the county share for any unexpended portion of the allocation.

Biennial Programming Process

The biennial programming process begins with the development and adoption of the Fund Estimate. Caltrans is required by statute to prepare a proposed Fund Estimate, following a method determined by the Commission in consultation with Caltrans and regional agencies. Caltrans is required to submit this proposed Fund Estimate to the Commission by July 15 of each odd-numbered year, and the Commission is required to adopt the Fund Estimate by August 15. The Fund Estimate is to be based on existing statute and is required to include a breakdown by fiscal year and by county (i.e. including county share status).

STIP project nominations are made through the regional RTIPs and the Caltrans ITIP, which are due to the Commission by December 15 of each odd-numbered year. After receiving these project nominations, the Commission holds public hearings, including at least one in northern California and one in southern California. After the hearings, the Commission staff prepares its recommendations. The staff is required to make these recommendations available to Caltrans and the regional agencies at least 20 days prior to STIP adoption. The Commission is required to adopt the STIP and submit it to the Governor and the Legislature by April 1 of each even-numbered year.

The statutes permit the Commission to postpone the adoption of the Fund Estimate for up to 90 days if it finds that legislation pending before the Legislature or the United States Congress may have a significant effect. The Commission is further authorized to amend the Fund Estimate prior to March 1 to account for unexpected revenues or other unforeseen circumstances. In that case, the Commission must extend the dates for submittal of the RTIPs and ITIP and for STIP adoption.

The development of the biennial SHOPP occurs during the same period. Caltrans is required to submit the SHOPP to the Commission by January 31 of each even-numbered year, after first submitting a draft to regional agencies for review and comment. The Commission is required to approve the SHOPP and submit it to the Governor and Legislature by April 1 of each even-numbered year.

State Programming Outside the STIP Process

In addition to the programs described above, the Commission programs and allocates several other sources or types of transportation funding.

Transportation Congestion Relief Program (TCRP). The Transportation Congestion Relief Act, enacted as part of AB 2928 (2000), created the TCRP with $4.909 billion designated for 141 specific projects identified in the Act. TCRP funding is a fixed amount set by statute. It is funded through the Traffic Congestion Relief Fund (TCRF), which received initial transfers from the General Fund and was to receive continuing annual transfers from the TIF through 2007-08. Over the years, continuing General Fund budget deficits have led to borrowing from the TCRF, so that funding of the remainder of the TCRP is now dependent on the repayment of prior loans. Proposition 1A mandated the repayment of General Fund borrowing at the rate of at least $83 million per year through 2015-16. Another $1 billion in borrowing is scheduled by statute for repayment from state revenues from tribal gaming, now at a rate of about $100 million per year. The Proposition 1A repayment is protected by the California Constitution. The tribal gaming repayment is not.

Funding for the TCRP is allocated by the Commission, though not programmed through the STIP. By statute, the Commission first approves project applications, an action similar to STIP programming in that it specifies project scope, cost, and schedule commitments by project component. As required by statute, all project lead applicant agencies submitted initial project applications by July 2002. Under limited circumstances, the Commission may approve applications for substitute or alternative projects. This may occur, for example, if the lead agency and the Commission agree that the designated project is delayed by external factors that are not likely to be removed within a reasonable amount of time. The Commission is also permitted to redirect previously allocated TCRP funds to a different project if it finds that the lead agency is not pursuing the project work diligently.

In most cases, the statutorily designated TCRP funding for a project is sufficient to fund only a portion of total project costs. For this reason, the availability of TCRP funding has leveraged STIP programming, influencing STIP project selection priorities.

Corridor Mobility Improvement Account (CMIA). This is a $4.5 billion program established under Proposition 1B for “performance improvements on highly congested travel corridors” on the state highway system or major access routes to the state highway system. The Commission fully programmed the CMIA funds in February 2007.

Route 99 Bond Program. This is a $1 billion program established under Proposition 1B for projects to improve Route 99 in the San Joaquin and Sacramento valleys. The Commission fully programmed the Route 99 funds in March 2007.

Trade Corridors Improvement Fund (TCIF). This is a $2.0 billion program established under Proposition 1B along trade corridors, including highway projects to accommodate freight movement and freight rail projects. The Commission fully programmed the TCIF funds in April 2008.

Highway-Railroad Crossing Safety Account (HCRSA). This is a $250 million program established under Proposition 1B for allocation by the Commission for grade separation and railroad crossing safety improvements. The Commission fully programmed the HCRSA funds in August 2008.

State-Local Partnership Program. This is a $1.0 billion program established under Proposition 1B for allocation by the Commission over a five-year period to projects with a dollar-for-dollar match of local funds. Under Proposition 1B, the program was subject to implementing legislation, later enacted through AB 268 (2008). Under AB 268, 95% of funds are available by formula to applicants with voter-approved sales taxes, tolls, or parcel or property taxes that are dedicated to transportation. The other 5% supports a discretionary grant program for applicants with uniform developer fees dedicated to transportation. AB 268 calls for project allocations by April 2009 for 2008-09 and by October of each fiscal year thereafter.

Federal special projects (demonstration) funding. From time to time, the Congress earmarks special funding (sometimes called high priority projects or demonstration funding) available for designated projects in Federal transportation reauthorization or appropriation acts. While the Commission has virtually no discretion over the use of these funds, they can play a significant part in STIP programming because they generally fund only a small part of a project's total cost. The availability of these funds is often used to leverage the programming of STIP funds or regionally programmed Federal funds.

Proposition 116. This 1990 initiative enacted the Clean Air and Transportation Improvement Act (CATIA), with a $1.99 billion general obligation bond measure. Although these funds are allocated by the Commission, they are not programmed through the regular STIP process. The terms of the proposition itself designated specific amounts for specific counties, corridors, projects, or project categories, including $1.857 billion for rail purposes. The Commission's Proposition 116 guidelines call for a two-step procedure to funding. The first is project approval, which represents a commitment of funds to a particular project and is analogous to programming. The second step is project allocation. As of April 2008, $175.4 million remained to be programmed for rail and other purposes, including $121.3 million designated for the City of Irvine for construction of a guideway demonstration project. Other remaining earmarks are for the counties of Marin, Monterey, Santa Cruz, and Sonoma, and the construction of the State Museum of Railroad Technology.

Environmental Enhancement and Mitigation (EEM) Program. Originally created in 1989 in conjunction with a major restructuring of State programming, the Environmental Enhancement and Mitigation (EEM) program is funded with $10 million per year transferred from the State Highway Account to the Environmental Enhancement and Mitigation Program Fund. Although the Commission allocates funds to individual projects, grant proposals are evaluated and an annual list is developed by the Resources Agency.

Aeronautics Program. The Aeronautics program is a biennial three-year program that includes the programming of projects to be funded from the Aeronautics Account, which is derived from taxes on aviation gasoline and general aviation jet fuel. Projects are for the acquisition and development of local general aviation airports. The projects are selected on the basis of priorities determined in accordance with evaluation procedures adopted by the Commission.

Regional Programming of Federal Funds

Under state law, two categories of federal funds are programmed directly by regional agencies and are not part of the regular STIP programming process. These include funds made available under the Regional Surface Transportation Program (RSTP) and the Congestion Mitigation and Air Quality (CMAQ) program. Projects may be on any highway or transit system, state or local.

Under federal law, RSTP funds are apportioned by population and restricted to expenditure within 12 substate areas, one for each of the 11 large urbanized areas and one for the remainder of the state. Under state law, RSTP funds are apportioned by population to each county. They may be used for virtually any road or transit purpose except transit operating costs.

Under federal law, CMAQ funds apportioned to the state may be expended anywhere in the state that is within an air quality nonattainment area. Under state law, CMAQ funds are apportioned to counties under a formula based on population weighted by the degree of nonattainment for ozone, carbon monoxide, and particulate matter. CMAQ funds are available for projects designated as transportation control measures (TCMs) in the State Implementation Plan (SIP) for air quality in the area.

Under state law, the RSTP and CMAQ funds apportioned to regions are subject to their own timely use of funds rule. Funds not used within a 3-year apportionment period may be redirected by the Commission for use on other transportation projects in the state.

Federal Programming Documents

Federal law calls for a different set of programming documents. Each of the 18 metropolitan planning organizations (MPOs) in California is required to prepare and adopt a transportation improvement program (TIP, Federal TIP or FTIP). This is not to be confused with the RTIP required under state law to nominate projects for the STIP. Caltrans is also required to prepare a statewide Federal TIP (FSTIP), not to be confused with the STIP adopted by the Commission. The FSTIP incorporates each of the 18 MPO FTIPs and also covers the portions of the state that are not within the area of an MPO.

The FTIPs and FSTIP must incorporate all projects to be funded with federal funds, whether programmed through the State STIP or SHOPP, through the regional RSTP or CMAQ programming, or with federal earmark funds. For Commission-programmed projects, the state programming process defines a decision-making process, while the federal process establishes compliance with federal law. The most important programming requirements of federal law are that the federal TIPs must include evidence that they are constrained to the amount of funds reasonably expected to be available for a period of at least three years; they must include project priorities, at least on a fiscal year basis; and they must be demonstrated to be in conformity with the air quality plan for the area. Federal funds will not be obligated for a project that is not included in a federally approved FTIP and FSTIP.

Federal law does not prescribe specific dates by which FTIPs and the FSTIP must be prepared, adopted, or approved, except to specify that the an FTIP "shall be updated [and approved] at least once every 2 years" and that the FSTIP "shall be reviewed and approved no less frequently than biennially." State law, however, requires that MPOs submit their FTIPs to Caltrans by August 1 of each even-numbered year and that Caltrans submit the FSTIP to the Federal Government by October 1 of each even-numbered year.

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